IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30-11-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE J.A.K. SAMPATH KUMAR

W.P.NOs.3782,3783,2696,3300,3847,3748,3749,3997, 4196, 4197, 4198, 4375, 4620, 4623, 4624, 4630, 4651, 4866, 4875,4892 to 4896,4905,4910,4912, 4919,5014,5058,5062 of 1998 and 2185 of 1999
and
WMP.NOs.5692,5693,4012,4926,5647,5648,5792,6040, 6381 to 6384,6669,7071,7076,7077,7086,7109,7522, 7539,7600 to 7604,7614,7622,7625,7633,7783,7852, 7856 of 1998 and 3095 of 1999

Kamarajapuram Labour Contract
Co-operative Society Ltd.,
rep. by its President,
C. Dasan,
Kamarajapuram, Anakaputhur,
Madras 600 070. .. Petitioner in WP.3782/98

S.K. Dharmalingam .. Petitioner in W.P.3783/98

Vs.

1. State of Tamil Nadu,
rep. by the Secretary to Govt.,
Industries Department,
Fort St. George,
Madras 600 009.

2. The District Collector,
Chengalpattu District,
Chengalpattu. .. Respondents in WP.3782/98 & W.P.3783/98

Erode District Jelly Crusher and
Quarry Oweners Assoication
rep by its Secretary
Mr.D. Govindasamy .. Petitioner in W.P.2696/98

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Mr.K.N. Rajalingam
S/o. Sri Natesan .. Petitioner in S.P.3300/98

The Selam Distict Blue Metal
Manufactures Assoication
(Regd. No.132/89)
rep by its Treasurer
Mr.C. Kaliappan .. Petitioner in W.P.3847/98

P. Arumugam
S/o. Sri. Ponnusamy .. PEtitioner in W.P.3748/98

M. Saminathan
S/o. Sri Manickam .. Petitioner in W.P.3749/98

Thiruvannamalai District
Machine Jelly Producers
Assoication
rep by its President
Sri P. Krishnamurthy .. Petitioner in W.P.3997/98

R. Rajendran,
S/o. Rangasamy Naidu .. Petitioner in W.P.4196/98

M.P. Srinivasan,
S/o. Ponnusamy .. Petitioner in w.P.4197/98

M.P. Sathiyamurthy
S/o. Ponnusamy Nadar .. Petitionerin W.P.4198/98

C. Manickam
S/o. Sri Chinnaih .. Petitioner in W.P.4375/98

T. Ganesan
S/o. Sri Thimmaiah Chetty .. Petitioner in W.P.4620/98

R. Gopalakrishnan
S/o. S. Ramasamy .. Petitioner in W.P.4623/98

Karur District Half Body Lorry
Tractor Jelly Businessmen
Crusher
and Quarry Owners Assoication,
rep by its President
K. Subramanian .. Petitioner in W.P.4624/98

V. Panneerselvam
S/o. Sri Vellaisamy Devar .. Petitioner in W.P.4630/98

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Tiruvnelveli Tuticorin District
Minor Mineral Lease Holders Sangham
(Regd.No.37/98)
rep by its Secretary .. Petitioner in W.P.4651/98

1.R. Sonai
2.R. Murugesan
3.M. Singaraj
4.S. Palanivel
5.M. Manikandan
6.S. Samuthram
7.P. Vedi Ramsamy
8.T. Bhuvaneswaran
9.M. Chinna Raja
10.T.J. Thereasa Joseph
11.T. Soundarajan
12.M. Ramachandran
13.M.K. Mahalingam
14.S.R. Kuppusamy
15.G. Sampath
16.M. Manikanndan
17.K. Pandi
18.P.T.V. Pitchai
19.P.K.M. Rajangam
20.K.P. Maduraisamy
21.M.P. Dharmapandian
22.M. Tamilselvi
23.M. Senthil kumar
24.A. Tamilarasu
25.N. Deivendran
26.V. Andammal
27.V. Baulraj
28.K.N. Soolairajan ... Petitioner in W.P.4866/98

K. Sundararajan
S/o. Kondaya Naidu ... Petitioner in W.P.4875/98

S. Santhiraj
S/o. Srinivasan ... Petitioner in W.P.4892/98

K. Muralidharan
S/o. Ramadoss Naicker ... Petitioner in W.P.4893/98

D.U. Chandra Prakash
S/o. S.D. Ugamchand ... Petitioner in W.P.4894/98

C. Abdul Khader
S/o. M.A. Chan Basha ... Petitioner in W.P.4895/98

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K. Nathamal
S/o. G. Kanyalal ... Petitioner in W.P.4896/98

K.S. Sundaram
S/o. Durairaj ... Petitioner in W.P.4905/98

K. Dhanasekaran
S/o. C. Krishnan ... Petitioner in W.P.4910/98

M.A. Chan Basha
S/o. Abdul Basha ... Petitioner in W.P.4912/98

S.D. Premchand
S/o. Daramchand ... Petitioner in W.P.4919/98

G. Manickam
S/o. Gurusamy ... Petitioner in W.P.5014/98

B.A. Kahar Basha
S/o. B. Abdulla ... Petitioner in W.P.5058/98

B. Kalivardha Reddy
S/o. Bangaru Reddy ... Petitioner in W.P.5062/98

S. Prema
W/o. Sekar ... Petitioner in W.P.2185/99

VS

1. The State of Tamilnadu
rep by the Secretary to Governemnt
Industries Department
Fort st. George,
Chennai-9. ... First Respondent in all Wps

The District Collector,
Erode District, Erode. ... 2nd Respondent in W.P.2696/98

The District Collector
Tiruchi District
Tiruchirappalli ...2nd Respondents in W.P.3300/98 and W.P.4375/98

The District Collector
Salem District at Salem ... 2nd Respondent in W.P.3847/98

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The Dsitrict Colector
Perambalur District,
Perambalur ... 2nd Respondent in W.P.3748/98 & 3749/98

The District Collector
Thiruvannamalai Dsitrict,
Thiruvannamalai ... 2nd Respondent in W.P.3997/98

The Dsitrict Collector
Vellore District,
Vellore. ... 2nd Respondent in W.P.4196, 4197 & 4198/98

The District Collector
Dharmapuri District,
Dharmapuri ... 2nd Respondent in W.P.4620/98 & W.P.4623/98

The District Colector,
Karur Dsitrict,
Karur. ... 2nd Respondent in W.P.4624/98

The District Collector
Thiruvallur District,
Thiruvallur ... 2nd Respondent in W.P.4630/98 & W.P.5058/98

The District Collector
Tirunelveli District,
Tirunelveli District. ... 2nd Respondent in W.P.4651/98

The District Collector
Tuticorin District,
Tuticorin .... 3rd Respondent in W.P.4651/98

The District Colector
Madurai District.
Madurai ... 2nd Respondent in W.P.4866/98

The District Collector
Kanchipuram ... 2nd Respondent in W.Ps.4875, 4892, 4893, 4894, 4895, 4896, 4905,4910, 4912 and 4919/98

The Dsitrict Collector
Coimbatore District,
Coimbatore. ... 2nd Respondent in W.P.5014/98

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The District Collector
Villupuram District
Villupuram. ... 2nd Respondent in W.P.5062/98

The Revenue Disvisional Officer,
Ranipet,
Vellore District. ... 2nd Respondent in W.P.2185/99

W.P.Nos.3782, 3783,2696,3300,3847,3748,3749,3997, 4196, 4197, 4198, 4375, 4620, 4623, 4624, 4630, 4651, 4866, 5014,5058,5062 of 1998 and 2185 of 1999.

Petition filed under Article 226 of the Constitution of India the issuance of writ of declaration to declare the first Respondent's Orders in G.O.Ms.No.3, 4 and 5, Industries (MMC1), dated 2.1.1998 amending the Tamil Nadu Minor Mineral Concession Rules, 1959 as ultra vires, illegal, null and void so far as the petitioner is concerned respectively.

W.P.Nos.4875, 4892 to 4896, 4905,4910,4912 and 4919 of 1998.

Petition filed under Article 226 of the Constitution of India the issuance of writ of declaration to declare the Tamilnadu Mineral Concession Rules 1959 as amended by the first Respondent by G.O.Ms.No.3, 4 and 5, Industries (MMC1), dated 2.1.1998 as ultra vires, and unconstitutional in so far this petitioners are csoncerned respectively.

For Petitioner : Mr.M.K. Ramakrishna Reddy

For Respondents : Mr.R. Viduthalai,
Advocate General for
Mr.R. Thirugnanam

COMMON JUDGMENT

P.K. MISRA, J

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In this batch of writ petitions, common questions of law and fact are involved and the relief claimed in the writ petitions are being similar, all the matters have been heard together and shall be disposed by the present common judgment.

2. The petitioners have prayed for a declaration that the orders passed in G.O.Ms.Nos.3, 4 and 5, Industries (MMC1) dated 2.1.1998 amending the Tamil Nadu Minor Mineral Concession Rules, 1959 as illegal, null and void and for quashing the same.

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3. The brief background facts are as follows :-

The Mines and Minerals (Regulation and Development) Act, 1957 (Act 67 of 1957), hereinafter referred to as "the Act" is a Central Act dealing with the subject "Minerals" which comes within Item No.54 of the Union List. It is an Act to provide for the development and regulation of mines and minerals under the control of the Union of India.

Section 2 of such Act contains the declaration as to the expediency of Union control of the regulation of mines and development of minerals to the extent provided in the Act. Under Section 3(a), "minerals" includes all minerals except mineral oils. Under Section 3(e) "minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral.

4. Section 15 empowers the State Government to make rules in respect of minor minerals and is extracted hereunder :-

> "15. Power of State Governments to make rules in respect of minor minerals- (1) The State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith.
>
> (1A) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters,namely :-
>
> (a) the person by whom and the manner in which, applications for quarry leases, mining leases or other mineral concessions may be made and the fees to be paid therefor;
>
> (b) the time within which, and the form in which, acknowledgement of the receipt of any such applications may be sent;
>
> (c) the matters which may be considered where applications in respect of the same land are received within the same day;
>
> (d) the terms on which, and the conditions subject to which and the authority by which quarry leases, mining leases or other mineral concessions may be granted or renewed;
>
> (e) the procedure for obtaining quarry leases, mining leases or other mineral concessions;
>
> (f) the facilities to be afforded by holders of quarry leases, mining leases or other mineral concessions to persons deputed by the Government for the purpose of undertaking research or training in matters relating to

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mining operations;

(g) the fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and the manner in which these shall be payable;

(h) the manner in which rights of third parties may be protected (whether by way of payment of compensation or otherwise) in cases where any such party is prejudicially affected by reason of any prospecting or mining operations;

(i) the manner in which rehabilitation of flora and other vegetation, such as shurbs and the like destroyed by reason of any quarrying or mining operations shall be made in the same area or in any other area selected by the State Government (whether by way of reimbursement of the cost of rehabilitation or otherwise) by the person holding the quarrying or mining lease.

(j) the manner in which and the conditions subject to which, a quarry lease, mining lease or other mineral concession may be transferred.

(k) the construction, maintenance and use of roads, power transmission lines, tramways, railways, aerial ropeways, pipelines and the making of passage for water for mining purposes on any land comprised in a quarry or mining lease or other mineral concession;

(l) the form of registers to be maintained under this Act;

(m) the reports and statements to be submitted by holders of quarry or mining leases or other mineral concessions and the authority to which such reports and statements shall be submitted;

(n) the period within which and the manner in which and the authority to which applications for revision of any order passed by any authority under these rules may be made, the fees to be paid therefor, and the powers of the revisional authority; and

(o) any other matter which is to be, or may be prescribed.

(2) Until rules are made under sub-section (1), any rules made by a State Government regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals which are in force immediately before the commencement of this Act shall continue in force.

(3) The holder of a mining lease or any other mineral concession granted under any rule made under sub-section (1) shall pay royalty or dead rent, whichever is more in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in

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the rules framed by the State Government in respect of minor minerals;

Provided that the State Government shall not enhance the rate of royalty or dead rent in respect of any minor mineral for more than once during any period of three years."

5. Section 14 provides that the provisions of Sections 5 to 13 shall not apply to quarry leases, mining lease or other mineral concessions in respect of minor minerals.

Section 18 is as follows :-

"18. Mineral development.- (1) It shall be the duty of the Central Government to take all such steps as may be necessary for the conservation and systematic development of minerals in India and for the protection of environment by preventing or controlling any pollution which may be caused by prospecting or mining operations and for such purposes the Central Government may, by notification in the Official Gazette, make such rules as it thinks fit.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-

(a) the opening of new mines and the regulation of mining operations in any area;

(b) the regulation of the excavation or collection of minerals from any mine;

(c) the measures to be taken by owners of mines for the purpose of benefication of ores, including the provision of suitable contrivances for such purpose;

(d) the development of mineral resources in any area;

(e) the notification of all new borings and shaft sinkings and the preservation of bore-hole records, and specimens of cores of all new bore-holes.

(f) the regulation of the arrangements for the storage of minerals and the stocks thereof that may be kept by any person;

(g) the submission of samples of minerals from any mine by the owner thereof and the manner in which and the authority to which such samples shall be submitted; and the taking of samples of any minerals from any mine by the State Government or any other authority specified by it in that behalf;

(h) the submission by owners of mines of such special or periodical returns and reports as may be specified and the form in which and the authority to which such returns and reports shall be submitted;

(i) the regulation of prospecting operations;

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(j) the employment of qualified geologists or mining engineers to supervise prospecting or mining operations;

(k) the disposal or discharge of waste slime or tailings arising from any mining or metallurgical operations carried out in a mine;

(l) the manner in which and the authority by which directions may be issued to the owners of any mine to do or refrain from doing certain things in the interest of conservation or systematic development of minerals or for the protection of environment by preventing or controlling pollution which may be caused by prospecting or mining operations;

(m) the maintenance and submission of such plans, registers or records as may be specified by the Government;

(n) the submission of records or reports by persons carrying on prospecting or mining operations regarding any research in mining or geology carried out by them;

(o) the facilities to be afforded by person carrying out prospecting or mining operations to persons authorised by the Central Government for the purpose of undertaking research or training in matters relating to mining or geology.

(p) the procedure for and the manner of imposition of fines for the contravention of any of the rules framed under this section and the authority who may impose such fines; and

(q) the authority to which, the period within which, the form and the manner in which applications for revision of any order passed by any authority under this Act and the rules made thereunder may be made, the fee to be paid and the documents which should accompany such applications.

(3) All rules made under this section shall be binding on the Government."

6. Section 26, which occurs in the Chapter under the heading "Miscellaneous" is as follows :-

"26. Delegation of powers.-(1) The Central Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act may,in relation to such matters and subject to such conditions, if any, as may be specified in the notification be exercisable also by-

(a) such officer or authority subordinate to the Central Government; or

(b) such State Government or such officer or authority subordinate to a State Government; as may be specified in the notification.

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(2) The State Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act may, in relation to such matters and subject to such conditions, if any, as may be specified in the notification, be exercisable also by such officer or authority subordinate to the State Government as may be specified in the notification.

(3) Any rules made by the Central Government under this Act may confer powers and impose duties or authorise the conferring of powers and imposition of duties upon any State Government or any officer or authority subordinate thereto."

7. The Tamil Nadu Minor Mineral Concession Rules, 1959 (hereinafter referred to as "the Rules") was made by the State in exercise of powers conferred under Section 15 of the Act.

Under Rule 3, an application for grant of a quarrying permit shall be made in the prescribed Form to the District Collector. By virtue of Rule 3(2), the District Collector may grant a quarrying permit for any minor mineral other than the minor minerals covered under Rules 8-A and 8-C. [Rule 8-A relates to lease of quarries to private persons in respect of Granite and Rule 8-C relates to quarrying of Granite by the State Government and granting of lease to a State Government Company or Corporation. In the present case, we are not at all concerned with the lease regarding granite either under Rule 8-A or 8-C]

8. Rule 8 provides for leasing of lands for quarrying minor minerals other than the mineral covered under Rules 8A and 8C. It prescribes a detailed procedure relating to leasing of lands for quarrying minor minerals other than the mineral covered under Rules 8A and 8C.

Section V contains Miscellaneous provisions.

9. Since various amendments to Rule 36(5) are in question, it would be appropriate to quote in extenso the relevant provisions.

"36(5)(a) The quarrying permit holder or the lessee or his tenant or lessee, etc., shall keep correct accounts showing the quantity and other particulars of all minerals obtained and despatched from the quarry. He shall also allow any officer authorised by the State Government, Director of Geology and Mining, Chief Conservator of Forests, the Collector or the District Forest Officer, as the case may be, to examine such accounts and furnish him with such informations and returns as may be specified by them.

(aa) Joint Director (Geology and Mining) Deputy

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Director (Geology and Mining) Assistant Director (Geology and Mining), Assistant Geologist, Special Tahsildar (Mines), Special Deputy Tahsildar (Mines) and Special Revenue Inspector (Mines) in the district offices of the Department of Geology and Mining and Presidents of Village Panchayats, Executive Officers of Town Panchayats or Townships and the commissioners of Municipalities or Corporations shall exercise the powers and discharge the duties as may be required and as the circumstances of the cases warrant in respect of the provisions of clause (a) and within their respective jurisdiction.;

Provided that the said powers and duties exercisable and dischargeable by the local body authorities specified above shall be exercisable and dischargeable only in respect of minor minerals namely building and road turf and ordinary clay gravel ordinary sand earth and truf and ordinary clay including silt brick and tile clay and within their jurisdiction relating to all lands excepting the reserved forest lands and ponds reserved under the Tamil Nadu Forest Act,1882 (Tamil Nadu Act V of 1882).

(b) (omitted as not necessary)

(bb) In respect of minor minerals namely building and road construction stones including gravel ordinary sand earth and truf and ordinary clay including silt, brick and tile clay occurring in any land except those lands constituted as reserved forests under section 16 of the Tamil Nadu Forests Act, 1882 (Tamil Nadu Act V of 1882) an reserved lands notified under Section 26 of the said Act V of 1882, the Presidents of Village Panchayats, Executive Officers of Town Panchayatsd and Townships and Commissioners of Municipalities and Corporations shall collect lease amount, seignorage fee or deed rent or area assessment or any other payment as the case may be in relation to the lessees or permit holders, sign and issue transport permits and despatch slips to the quarrying permit holders and lessees and collect penalty amount and compounding fee from the persons liable to pay the penalty or compounding fee as the case may be.

Provided that in the case of village panchayats the transport permit and despatch slips shall be jointly signed by the village panchayat, President and Vice-President. In the absence of Vice-President any member authorised by the panchayat for this purpose shall jointly sign the transport permits and despatch slips in the place of Vice-President.

Provided further that the issue and use of transport permits and despatch slips for transportation of any minor mineral shall be subject to the condition stipulated in these rules and instructions of the State

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Government, Director of Geology and Mining and or the District Collector or the District Forests Officer issued from time to time.

(c) The quarrying permit holder or the lessee shall carry out quarrying operations in a skilful, scientific and systematic manner keeping in view proper safety of the labour, structure and the public and public works located in that vicinity of the quarrying area and in a manner to preserve the environment and ecology of the area.

(d) (omitted as not necessary)

(dd) Joint Director (Geology and Mining) Deputy Director (Geology and Mining) Assistant Director (Geology and Mining), Assistant Geologist, Special Tahsildar (Mines), Special Deputy Tahsildar (Mines) and Special Revenue Inspector (Mines) in the district offices of the Department of Geology and Mining and Presidents of Village Panchayats, Executive Officers of Town Panchayats or Townships and the commissioners of Municipalities or Corporations shall exercise the powers and discharge the duties as may be required and as the circumstances of the cases warrant in respect of the provisions of clause (d) and within their respective jurisdiction.:

Provided that the said powers and duties exercisable and dischargeable by the local body authorities specified above shall be exercisable and dischargeable only in respect of minor minerals namely building and road construction stones including gravel, ordinary sand, earth and truf and ordinary clay including silt, brick and tile clay and within their jurisdiction relating to all lands excepting the reserved forest lands and lands reserved under the Tamil Nadu Forests Act, 1882 (Tamil Nadu Act V of 1882).

(e) to (h) (omitted as not necessary).”

10. The provisions contained in Section 36(5)(aa), (bb) and (dd),including the provisos have been inserted vide G.O.Ms.No.3, Industries (MMC1), dated 2.1.1998 with effect from 1.4.1998. The petitioners have also challenged the validity of G.O.Ms.Nos.4 & 5 of the said date. Under G.O.Ms.No.4 dated 2.1.1998, provision has been made in exercise of powers conferred under Section 21 of the Act read with the Government of India, Ministry of Steel and Mines, Department of Mines, Notification dated 6.2.1979. The Government has empowered the Joint Directors in the Department of Geology and Mining, the Presidents of Village Panchayats, the Executive Officers of Town Panchayats, Townships and the Commissioners of Municipalities and Corporations to exercise the powers under Section 21(4) in respect of minor minerals, namely, building and road construction stones including gravel, ordinary sand, earth and turf and ordinary clay including

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silt, brick and tile clay.

In the very same notification, in exercise of powers conferred under Section 26(2) of the Act, the power exercised by the State Government under Section 21(5) shall be exercisable also by the Revenue Divisional Officers in respect of minor minerals, namely, building and road construction stones including gravel, ordinary sand, earth and turf and ordinary clay including silt, brick and tile clay.

11. Under G.O.Ms.No.5 dated 21.1.1998, the State Government issued instructions in respect of common use minor minerals by Village Panchayats, Town Panchayats, Townships, Municipalities and Corporations relating to collection of seigniorage fee, etc.

12. The main challenge of the petitioner is on the ground that the amendments made to the Minor Mineral Concession Rules, 1959 under G.O.Ms.No.3 are beyond the rule making power of the State Government and are illegal and invalid because such rules are contrary to the provisions contained in Section 26(2) of the Act. More particularly it has been submitted that the provision in the Rules empowering the Panchayat Presidents and Municipal Commissioners to do certain acts are contrary to Section 26(2) of the Act. The contention of the petitioners is to the effect that such Panchayat Presidents and Municipal Commissioners are not officers/authorities subordinate to the State and, therefore, no such power could have been delegated to them as according to Section 26(2) delegation can be made only in favour of officer/authority subordinate to the State.

13. After the writ petitions were entertained, a learned single Judge of this Court had passed an order of stay so far as the amended Rules or the notifications authorising the Panchayat Presidents to do certain acts. Other part of the notifications, which related to the Commissioners of Municipalities and Corporations, had not been stayed, apparently because the learned single Judge had felt at that stage that the Commissioner was an officer subordinate to the State and, therefore, prima facie there was no conflict between the different G.Os and Section 26(2) of the Act.

14. Mr.Ramakrishna Reddy, who has argued on behalf of the petitioners, has confined his attack to the provisions empowering the Panchayat Presidents to do certain acts. In this connection, the only contention raised by him is to the effect that the Panchayat President is obviously not an officer and even if he is an authority, it cannot be said that he is subordinate to the State and therefore, no such delegation could have been made in favour of the Panchayat President.

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15. The other counsels appearing in the connected matters have tacitly adopted the submissions made by the aforesaid counsel inasmuch as they have not advanced any further argument.

16. Learned Advocate General appearing on behalf of the State has justified the provision by raising two contentions. It is first contended by him that G.O.Ms.No.3 has been issued amending the existing Minor Mineral Concession Rules in exercise of rule making power under Section 15 of the Act and since Section 15 confers a plenary power on the State Government to frame rules, there is no embargo on the State Government to incorporate additional provisions in the Rules by way of amendment. Therefore, according to him, G.O.Ms.No.3 is legal and valid. It is further submitted by him that since G.O.Ms.Nos.4 and 5 are the consequent notifications issued in order to effectuate the amended rules, if the amended rules are upheld, the validity of G.O.Ms.Nos.4 and 5 must be held to be valid. In the alternative the learned Advocate General has submitted that even assuming that rule making power was not available, the delegation made cannot be said to be beyond the Section 26(2) of the Act as the Commissioner can be said to be an officer/authority subordinate to the State and similarly a Panchayat President can be characterised as an authority subordinate to the State. In this connection, it is pointed out by him that there are several provisions contained in the Tamil Nadu Panchayats Act which envisage exercise of various controls over the Panchayat President either by the District Collector, who is a subordinate officer of the State Government, or even by the State Government and, therefore, in that sense it can be said that the Panchayat President is an authority subordinate to the State. Learned Advocate General has further submitted that so far as sand as a minor mineral is concerned, the right to carry on the mining relating to sand has been taken over by the State Government and therefore the question has become academic so far as the sand is concerned.

17. Section 15 of the Act has already been extracted. A bare reading of the aforesaid provision makes it clear that the State Government has got plenary power to make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals. Section 15(1A) refers to the power of the State Government to provide for all or any of the matters indicated in such provision. Particular reference can be made to clause (d), which envisages that the rule making power encompasses "the terms on which, and the conditions subject to which and the authority by which quarry leases, mining leases or other mineral concessions may be granted or renewed". Similarly clause (l) refers to the form of registers to be maintained under this Act and clause (m) refers to the reports and statements to be submitted by holders of quarry or mining leases or other mineral concessions and the authority to which such reports and statements

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shall be submitted. The amendment to the Rules, which are impugned in the present batch of writ petitions, are more or less relatable to clause 15(1A)(l) and (m). Even otherwise, as already indicated, Section 15(1) itself envisages political power of the State Government to make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith. Even assuming that there is no specific provision in Section 15(1A), the provisions contained in Section 15(1) are wide in their application. Therefore, the rules framed originally and the amended rules cannot be said to be beyond the rule making power of the State Government.

18. Learned counsel appearing for the petitioners has however submitted that the rule making power must be exercised consistent with the provisions contained in the Act and if any rule is framed contrary to the provisions of the Act, such rule must be held to be illegal and inoperative. Even though there cannot be any two opinion regarding the fact that a rule has to be framed consistent with the provisions of the Act, in the present case, we do not find any inconsistency in the amended rules framed by the Government empowering the different authorities on certain aspects, with the provisions contained in Section 26(2) of the Act. We do not find any inconsistency in the amended rules vis-a-vis the provisions contained in Section 26(2) as, in our opinion, the rules which are intended to regulate the grant of quarry leases or mining leases are in any way in conflict with the power conferred under the State Government to delegate its function.

19. Section 26(2) is only an enabling provision which enables the State Government to direct that any power exercisable by the State under the Act can be exercisable by any officer or authority subordinate to the State Government as may be specified in the notification. The reference to "any power exercisable by it" obviously refers to administrative power and not the rule making power of the State Government to make rules as envisaged under Section 15 of the Act. Section 26(2) only envisages that where the State is expected to exercise some administrative powers or executive powers either as specifically envisaged under the Act or even as a delegatee of the Central Government, such power can be further delegated to any subordinate officer or authority.

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20. The provisions made in 1959 Rules, initially empowering the Collector to grant lease and to exercise various controls over the lessees, are not instances of delegation of power envisaged under Section 26(2), but are outcome of the statutory rules framed by the State Government in exercise of its rule making power as conferred on the State Government by Section 15 of the Act and by no stretch of imagination it can be said that the powers and duties conferred on the Collector by virtue of various provisions

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contained in 1959 Rules were instances of power/authority delegated under Section 26(2).

21. Analysed in the above manner, we do not find any substance in the submission made by the petitioner that the amended rules empowering/authorising certain other authorities such as Presidents of the Panchayats and Commissioners of the Municipalities/Corporations to exercise certain controls and discharge certain duties are in any way conflict with the provisions contained in Section 26(2).

22. Even otherwise we are unable to accept the contention of the learned counsel appearing for the petitioners that the Panchayat President is not an authority subordinate to the State Government. It may be true as contended by the learned counsel for the petitioners that the Panchayat President may not be characterised as an officer subordinate to the State Government, but the question is not whether he is an officer subordinate to the State Government, but the question is whether he is an authority subordinate to the State Government.

Panchayat President is obviously an authority envisaged under the Tamil Nadu Panchayats Act. The meaning of the expression "authority" as available from various Dictionaries is as follows :-

In Concise Oxford Dictionary, 10th edition, the expression "authority" has been defined to mean as "a person or organisation exhorting control in a particular political or administrative sphere."

According to Black's Law Dictionary, 18th Edition, "authority" means the right or permission to act legally on another's behalf.

As per Advanced Law Lexicon, 3rd Edition, "authority" means a person or persons or a body exercising power of command.

According to Webster's Collegiate Dictionary, 10th Edition, "authority" means, the power to influence or command thought, opinion or behaviour.

In the above context, therefore, the Panchayat President as envisaged under the Tamil Nadu Panchayats Act can obviously be considered as an authority.

23. The next question is as to whether he can be considered as an authority subordinate to the State Government. Even though the Panchayat President is not appointed by the State Government, certain controls are exercised by either the State Government or State Government's subordinate officers such as Collector (Inspector) over the President of the Panchayat. For instance, Chapter X of the Tamil Nadu Panchayats Act, 1994 relates to controlling authorities. Under Section 199, the Government may appoint officer for the purpose of inspecting or superintending the

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operations of all or any of the panchayats constituted under the Act. Under Section 205 of the Tamil Nadu Panchayats Act, the Inspector has jurisdiction to remove the Panchayat President, of course, by following the procedure prescribed. Similarly, under Section 216, the Government has power to dissolve the district panchayat. Under Section 238 the Government has power to adjudicate upon the disputes between the local authorities including the district panchayat.

From these provisions, it is apparent that the President of the Panchayat can be considered as an authority subordinate to the State Government.

24. The expression "subordinate" as per Oxford Dictionary means "lower in rank or position of less or secondary importance; a person under the authority or control of the other".

According to "Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd Edition, 2005 "Subordinate" means, belonging to an inferior rank, grade, class or order.

As per Webster's New World Dictionary, "Subordinate" means, inferior to or placed below another in rank, power, importance, etc; secondary ; under the power or authority of another.

In such sense, obviously the Panchayat President can be considered as an authority subordinate to the State Government. Therefore, even if the provisions contained in the Rules are considered as instances of delegation of power as envisaged under Section 26(2) of the Act, we do not find anything conflict with the provisions contained in Section 26(2) inasmuch as the Panchayat President can be construed as an authority subordinate to the State Government. Therefore, the main submission made by the counsel for the petitioner is unacceptable.

25. Learned counsel appearing for the petitioners submitted that the Panchayat President is empowered to exercise powers or discharge duties as envisaged under the Panchayat Act only and, therefore, he cannot exercise any authority or control under any other law.

It is no doubt true that the Tamil Nadu Panchayats Act defines the extent of power and duties of the Panchayat Presidents, but it is no where envisaged that a Panchayat President cannot be entrusted with any other duty or job. At any rate, in the absence of any prohibitory provision in the Tamil Nadu Panchayats Act, there is no embargo in conferring additional power or duties on the Panchayat President by virtue of any specific provision made in any other Act or statutory rules made under the Act.

26. Since the main contentions raised by the petitioners on the above aspects are not acceptable, the validity of G.O.Ms.No.3, Industries (MMC1), dated 2.1.1998 is bound to be

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upheld. Once such rule is found to be valid, the provisions made in G.O.Ms.No.4 & 5 dated 2.1.1998 being

supplemental and consequential in nature, are therefore valid.

27. Learned counsel appearing for the petitioners contended that, as a matter of fact, while considering the question of stay, a detailed order has been passed staying the operation of the provisions contained in the amended Rules, so far as they have conferred any power or authority on the Panchayat President, and as such such provisions in the Rules have not become effective. It is submitted by him that many important powers are sought to be conferred on the Panchayat Presidents, which may not be in the interest of development of mines and minerals in the State, keeping in view their political background without following consistent principle. Whether such power or authority should be exercised by the Panchayat President is obviously a matter of policy and it is not for the courts of law to express their opinion on this aspect. However, since the rule had not become operative, so far as such aspect is concerned, it would be open to the State Government to consider such aspect and make any appropriate amendment. However, it is made clear that such observation should not be construed as expressing any opinion on the matter.

28. For the aforesaid reasons, we do not find any merit in the writ petitions which are dismissed, subject to the observations made. There would be no order as to costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Secretary to Govt.,
   Industries Department,
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Erode District, Erode.

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Tiruchi District
Tiruchirappalli

5. The District Collector
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Thiruvannamalai Dsitrict,
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Madurai

15. The District Collector
Kanchipuram

16. The Dsitrict Collector
Coimbatore District,
Coimbatore.

17. The Dsitrict Collector
Villupuram District
Villupuram.

18. The Revenue Disvisional Officer,
Ranipet,
Vellore District.

1 cc to the Government Pleader, Sr. 59246
1 cc to Mr.K. Ramakrishna Reddy, Advocate, sr. 59036

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